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Promotion and protection of human rights**Letter dated 19 May 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General**

I have the honour to enclose herewith the pronouncement in support of United Nations Working Group on Arbitrary Detention opinion No. 19/2005 of the Ruling Council of the Ibero-American Federation of Ombudsmen (FIO), representing 86 national, state, autonomous and provincial ombudsmen from Spain, Portugal, Andorra, Mexico, Puerto Rico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Venezuela (Bolivarian Republic of), Ecuador, Bolivia, Peru, Uruguay, Paraguay and Argentina (see annex). The pronouncement was adopted by the Ruling Council of FIO in Mexico on 27 March 2008.

Furthermore, I kindly request that the present letter and its annex be circulated as a document of the sixty-second session of the General Assembly, under agenda item 70.

(Signed) Ileana Núñez Mordoche

Ambassador

Chargé d'affaires a.i. of the Permanent Mission of Cuba
to the United Nations



**Annex to the letter dated 19 May 2008 from the Chargé d'affaires
a.i. of the Permanent Mission of Cuba to the United Nations
addressed to the Secretary-General**

**Pronouncement in support of United Nations Working Group on
Arbitrary Detention opinion No. 19/2005**

[Original: English and Spanish]

27 March 2008

The Ruling Council of the Ibero-American Federation Ombudsmen (FIO), representing 86 national, state, autonomous and provincial ombudsmen from Spain, Portugal, Andorra, Mexico, Puerto Rico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Venezuela (Bolivarian Republic of), Ecuador, Bolivia, Peru, Uruguay, Paraguay and Argentina, in the pursuance of our duty of encouraging, improving and strengthening human rights culture and denouncing to international public opinion the violations of the human rights that, for their seriousness deserve it, met in Mexico on 27 March to declare the following:

1. Opinion No. 19/2005 of the United Nations Working Group on Arbitrary Detention, addressed to the Government of the United States of America, relating to the case of Antonio Guerrero Rodríguez, Fernando González Llort, Gerardo Hernández Nordelo, Ramón Labañino Salazar and René González Schwerert, recognizes that the aforementioned country is a party to the International Covenant on Civil and Political Rights, and therefore the United States Government is obliged to honour it.

2. Regarding this subject, and in observance of resolutions 1991/42, 1997/50 and 2003/31 of the then Commission on Human Rights, the United Nations Working Group on Arbitrary Detention, in accordance with the articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights, observes the following:

(a) Following their arrest, and notwithstanding the fact that the detainees had been informed of their right to remain silent and had their defence provided by the Government, they were kept in solitary confinement for 17 months, during which time communication with their attorneys, access to evidence and, thus, possibilities to have an adequate defence were weakened;

(b) As the case was classified as one of national security, access by the detainees to the documents that contained evidence was impaired. The Government has not contested the fact that defence lawyers had very limited access to evidence because of this classification, negatively affecting their ability to present counter-evidence. This particular application of the legal provisions of the Classified Information Procedures Act, as done in this case and as the information available to the Working Group reveals, has also undermined the equal balance between the prosecution and the defence;

(c) The jury for the trial was selected following an examination process in which the defence attorneys had the opportunity and availed themselves of the procedural tools to reject potential jurors, and ensured that no Cuban-Americans served on the jury. Nevertheless, the Government has not denied that even so, the climate of bias and prejudice against the accused in Miami persisted and helped to present the accused as guilty from the beginning. It was not contested by the Government that one year later it admitted that Miami was an unsuitable place for a trial, where it proved almost impossible to select an impartial jury in a case linked with Cuba;

(d) The Working Group notes that it arises from the facts and circumstances in which the trial took place, and from the nature of the charges and the harsh sentences given to the accused, that the trial did not take place in the climate of objectivity and impartiality which is required in order to conclude that it was in observance of the standards of a fair trial, as defined in article 14 of the International Covenant on Civil and Political Rights, to which the United States of America is a party;

(e) This imbalance, taking into account the severe sentences received by the persons under consideration in this case, is incompatible with the standards contained in article 14 of the International Covenant on Civil and Political Rights that guarantee that each person accused of a crime has the right to exercise, in full equality, all appropriate facilities to prepare his defence.

The Working Group concludes that the three elements enunciated above, combined together, are of such gravity that they confer upon the deprivation of liberty of these five persons an arbitrary character.

In the light of the preceding, the Working Group issues the following opinion:

1. The deprivation of liberty of Antonio Guerrero Rodríguez, Fernando González Llort, Gerardo Hernández Nordelo, Ramón Labañino Salazar and René González Schweret is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights, and corresponds to category III of the applicable categories examined in the cases before the Working Group.

2. Having issued this opinion, the Working Group requests the Government to adopt the necessary steps to remedy the situation, in conformity with the principles stated in the International Covenant on Civil and Political Rights.

The above opinion was adopted on 27 May, 2005.

The members of FIO recognize that:

1. In accordance with what is established by article 14 of the International Covenant on Civil and Political Rights: All persons shall be equal before the courts and tribunals. Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of any criminal charge against him, or of his rights and obligations in a suit at law.

2. It is necessary to remember that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law and to be tried without undue delay, to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.

3. Everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law.

4. Likewise, and in accordance with article 18 of the abovementioned Covenant, everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

5. Also, article 19 of this international document establishes that everyone shall have the right to hold opinions without interference and the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

In the light of the preceding, the FIO Ruling Council resolved:

1. To recommend and insist on full compliance with opinion No. 19/2005 of the United Nations Working Group on Arbitrary Detention in view of the fact that all people are always equal before the law and have, without distinction, right and equal protection of the law. Everyone has the right to equal protection against any discrimination and against any provocation for such discrimination.

2. Therefore, a fair and expedited trial is sought for Antonio Guerrero Rodríguez, Fernando González Llort, Gerardo Hernández Nordelo, Ramón Labañino Salazar and René González Sehwerert under the laws of the United States and the international instruments signed and ratified by that country.

3. Finally, it is sought that these five imprisoned people may unite with and be visited by their family members regardless of their condition.

FIO Ruling Council

Omar Cabezas Lacayo,
FIO President and Nicaragua Ombudsman

Beatriz Merino Lucero, Peru Ombudsman
Manuel María Páez Monges, Paraguay Ombudsman
Enrique Múgica Herzog, Spain Ombudsman
Carlos López Nieves, Puerto Rico Ombudsman
Óscar Humberto Herrera López, President of the Nayarit Commission of Human Rights, Mexico